

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY	)	
PARTNERS, COUNTRY MUSIC	)	
TELEVISION, INC., PARAMOUNT	)	
PICTURES CORPORATION, and BLACK	)	
ENTERTAINMENT TELEVISION, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. 07-CV-2203
	)	
YOUTUBE, INC., YOUTUBE, LLC,	)	
and GOOGLE, INC.,	)	
	)	
Defendants.	)	
	)	
THE FOOTBALL ASSOCIATION PREMIER	)	
LEAGUE LIMITED, BOURNE CO., et al.,	)	
on behalf of themselves and all	)	
others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. 07-CV-3582
	)	
YOUTUBE, INC., YOUTUBE, LLC, and	)	
GOOGLE, INC.,	)	
	)	
Defendants.	)	
	)	

VIDEOTAPED DEPOSITION OF MARYROSE DUNTON
SAN FRANCISCO, CALIFORNIA
FRIDAY, AUGUST 22, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15500

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AUGUST 22, 2008
10:02 a.m.

VIDEOTAPED DEPOSITION OF MARYROSE DUNTON,
held at the offices of SHEARMAN & STERLING,
525 Market Street, San Francisco, California,
pursuant to notice, before ANDREA M. IGNACIO
HOWARD, CLR, RPR, CSR License No. 9830.

1 A P P E A R A N C E S:

2

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1 A P P E A R A N C E S: (Continued.)

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17 KEN REESER, Videographer.

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DUNTON

10:08:08 Q And if -- if -- if there's any time you can't
10:08:13 remember, that could be part of your truthful answer;
10:08:17 okay?

10:08:18 A (Witness nods head.)

10:08:18 Q Let's start with just some general background
10:08:26 questions.

10:08:27 Did you attend college?

10:08:30 A I did.

10:08:30 Q Did you earn a degree?

10:08:32 A I did not.

10:08:33 Q Where did you attend college?

10:08:35 A I took classes at San Jose State. I took
10:08:38 classes at Stanford. I took classes at UCLA.

10:08:45 Q Okay. Did you have a major?

10:08:47 A Art history and literature.

10:08:48 Q Do you have any legal training?

10:08:51 A I do not.

10:08:52 Q Were any of the classes that you took at any
10:09:00 of those institutions legal classes or in any way
10:09:04 about the law?

10:09:05 A No.

10:09:05 Q Okay. With whom are you currently employed?

10:09:10 A Google.

10:09:11 Q And what is your title or position there

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10:09:15 currently?

10:09:16 A Currently, it is Manager of User Experience.

10:09:20 Q What are the duties -- what are your duties
10:09:23 as Manager of User Experience?

10:09:24 A I manage the designers and front-end
10:09:28 developers who are responsible for designing and
10:09:32 implementing the features and functionality on the
10:09:40 YouTube.com website.

10:09:52 Q All features and functionality of the
10:09:56 YouTube.com website?

10:09:57 MR. KRAMER: Objection; mischaracterizes to
10:09:59 the extent it purports to.

10:10:01 THE WITNESS: Can you -- I'm sorry. Can you
10:10:02 clarify?

10:10:03 MR. DESANCTIS: Yeah.

10:10:03 Q You said your response -- the team of
10:10:05 developers are responsible for designing and
10:10:08 implementing the features and functionality on the
10:10:11 YouTube.com website, and I'm asking you if -- if that
10:10:16 means all of the features and functionalities or some
10:10:18 subset of them?

10:10:20 MR. KRAMER: That's not quite what she said
10:10:23 or what the record reflects. She said front-end
10:10:26 developers.

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DUNTON

10:10:27 You can answer the question.

10:10:28 THE WITNESS: Yes, I can repeat.

10:10:30 My team is responsible for the design and
10:10:32 front-end implementation of the features of the
10:10:36 YouTube.com website.

10:10:38 MR. DESANCTIS: Okay.

10:10:38 Q Is that all of the features or only some
10:10:41 features?

10:10:41 A It is -- it is not all the features.

10:10:43 Q Okay. What features are included?

10:10:52 A Hard for -- it would be hard for me to come
10:10:54 up with a complete list, but it generally includes all
10:10:57 of the user-facing features.

10:11:00 Q Can you explain what user-facing features
10:11:12 are?

10:11:15 A Yes. I mean that anybody can go to the
10:11:17 YouTube.com website and see those features.

10:11:20 Q Okay. So this is the user interface?

10:11:25 A Correct.

10:11:25 Q Okay. Is your team responsible for the
10:11:34 development of all features on the user interface?

10:11:38 A No.

10:11:38 Q Which features are they not responsible for?
10:11:45 Or you can describe however you'd like what features

1 DUNTON

2 10:11:48 they are responsible for. I'm just trying to get the

3 10:11:53 sense of what the scope is.

4 10:11:54 A I couldn't give you a complete list, but

5 10:11:57 again we're responsible for many of the user-facing

6 10:12:03 features.

7 10:12:04 Q Can you just give me some examples?

8 10:12:08 A Sure.

9 10:12:10 The YouTube.com Homepage.

10 10:12:13 Q Okay. And the watch pages?

11 10:12:19 A We are -- my team is responsible for the

12 10:12:22 design and most of the front-end implementation for

13 10:12:28 the watch page.

14 10:12:28 Q And when you say "front end," is that

15 10:12:32 distinguished from presumably the back end? Is that

16 10:12:36 correct?

17 10:12:38 A That's correct.

18 10:12:39 So my team is responsible for all of the

19 10:12:44 user-facing features and functionalities, yes.

20 10:12:47 Q As opposed to what? How would you describe

21 10:12:50 the back end that your team is not responsible for?

22 10:12:53 A Anything that is not user facing.

23 10:12:55 Q So the engineering?

24 10:13:00 A At what -- I'm --

25 10:13:02 MR. KRAMER: The question is vague.

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10:13:03 THE WITNESS: Yeah, I'm sorry.

10:13:04 Can you -- can you qualify what you mean?

10:13:19 MR. DESANCTIS: I'll withdraw the question.

10:13:26 Let's do it a different way.

10:13:29 Q How many people currently report to you in
10:13:32 your current position at Google?

10:13:34 A Directly?

10:13:35 Q Yes.

10:13:37 A I believe about 16 people directly report to
10:13:42 me.

10:13:42 Q 16 did you say?

10:13:44 A I -- yes, I believe about 16 people directly
10:13:46 report to me.

10:13:47 Q How about indirectly?

10:13:52 A I believe about another ten people.

10:13:56 Q Okay. Is Micha Schaffer one of the people
10:14:08 who reports to you either directly or indirectly?

10:14:11 A He is not.

10:14:12 Q Okay. To whom does he report?

10:14:14 A I do not know.

10:14:18 Q Does Heather Gillette report to you either
10:14:29 directly or indirectly?

10:14:30 A She does not.

10:14:31 Q Okay. Can you list the names of the 16

1 DUNTON

2 10:14:35 people that do report to you directly?

3 10:14:39 A Sure. I can try.

4 10:14:45 Angus Durocher, Christina Brodbeck, David

5 10:14:59 Harlon, Omar Lee, Ches Wadja, Form Miller. Sasha, I

6 10:15:14 think, Lumbriosky. I can't pronounce her last name.

7 10:15:18 Hong Qu. Sarai, who's name I cannot -- last name I

8 10:15:26 cannot remember. BethEllyn McClendon, Ellen Beldner,

9 10:15:37 Gunther Hartwig, Jane Chiu, Craig McFadden.

10 10:15:53 MR. KRAMER: Somebody keeping count?

11 10:15:54 THE WITNESS: I think that's 13. Thank you.

12 10:16:09 I'm trying to remember the seating chart in my head.

13 10:16:15 Those are the only ones I can think of at the moment.

14 10:16:18 MR. DESANCTIS: Okay.

15 10:16:18 THE WITNESS: That directly report to me.

16 10:16:18 MR. DESANCTIS: Okay.

17 10:16:22 Q Going back to what the team that directly

18 10:16:24 reports to you is responsible for, you discussed

19 10:16:27 the -- the user interface.

20 10:16:33 Are they responsible for the administrative

21 10:16:36 user interfaces?

22 10:16:40 MR. KRAMER: Objection; the question is

23 10:16:41 vague.

24 10:16:42 THE WITNESS: Well, what do you mean by

25 10:16:43 "administrative"?

1 DUNTON

2 10:16:45 MR. DESANCTIS: Okay.

3 10:16:46 Q The interfaces that the Google or YouTube

4 10:16:48 employees see and use as they're performing their

5 10:16:53 duties.

6 10:16:56 A Some of them.

7 10:16:56 Q Which of them?

8 10:17:00 A Some of the interfaces.

9 10:17:03 Q Can you tell me which of the interfaces?

10 10:17:09 A At times, some of what we call admin tools

11 10:17:15 have been designed by individuals on my team.

12 10:17:26 Q Any other administrative interfaces that your

13 10:17:29 team is responsible for?

14 10:17:31 A That's all that comes to mind.

15 10:17:33 Q Okay. What are the administrative tools --

16 10:17:36 you said at times the administrative tools have been

17 10:17:39 developed by members of your team.

18 10:17:40 Are they currently?

19 10:17:44 A I -- I think I said they had been designed by

20 10:17:47 members of my team.

21 10:17:48 Q Uh-huh.

22 10:17:50 A That is not a full-time job for anybody on my

23 10:17:52 team, so at times they have been designed by other

24 10:17:58 people.

25 10:17:58 Q I see.

1 DUNTON

2 10:17:59 If it's not designed -- if an administrative

3 10:18:08 tool is not designed by someone on your team, who

4 10:18:11 would it be designed by?

5 10:18:12 MR. KRAMER: Calls for speculation.

6 10:18:14 THE WITNESS: I don't know. It -- it could

7 10:18:17 be anybody else in the company.

8 10:18:18 MR. DESANCTIS: Okay.

9 10:18:28 THE WITNESS: Thank you.

10 10:18:29 MR. DESANCTIS: Q. To whom do you directly

11 10:18:31 report?

12 10:18:32 A Today?

13 10:18:33 Q Yes.

14 10:18:34 A Hunter Walk.

15 10:18:36 Q And to whom does Hunter Walk report?

16 10:18:41 A Chad Hurley.

17 10:18:47 Q Okay. Let's go back to when you first began

18 10:18:58 work at YouTube.

19 10:19:00 When did you start at YouTube?

20 10:19:02 A I started working at YouTube in October of

21 10:19:07 2005.

22 10:19:07 Q And what position did you hold at that time?

23 10:19:13 A I was -- I was hired as a product manager, I

24 10:19:17 believe.

25 10:19:17 Q What were the duties? What were your duties

DUNTON

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2 10:19:20 as a product manager at that time?

3 10:19:24 A To work with the engineers and designers who
4 10:19:30 were designing and implementing the features on
5 10:19:35 YouTube.

6 10:19:35 Q Did the engineers and designers who were
7 10:19:42 designing and implementing the features on YouTube
8 10:19:45 report to you?

9 10:19:46 A At -- at what point?

10 10:19:48 Q When you began work at YouTube in October of
11 10:19:51 2005.

12 10:19:52 A No.

13 10:19:52 Q Okay. To whom did they report?

14 10:19:58 A I don't know.

15 10:19:59 Q Okay. Were you part of a department?

16 10:20:05 A We did not have a department when I first
17 10:20:07 started at YouTube.

18 10:20:08 Q Okay. Who did you -- who did you report to
19 10:20:11 when you first started at YouTube?

20 10:20:17 A I don't remember.

21 10:20:17 Q Okay. Did you ever report to Steve Chen
22 10:20:23 during your time at YouTube?

23 10:20:26 A I did, yes.

24 10:20:27 Q Okay. Do you recall what period that was?

25 10:20:38 A I -- I do not.

DUNTON

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2 10:20:40 Q Okay. Okay. You testified that you worked

3 10:21:12 with -- at that time October 2005 -- you worked with

4 10:21:16 engineers and designers who were designing and

5 10:21:18 implementing the features on YouTube.

6 10:21:23 Were there particular features that you

7 10:21:25 focused on at that time?

8 10:21:37 A I can't recall specifically, but at that time

9 10:21:44 I was probably mostly focused on user-facing --

10 10:21:52 Q Okay.

11 10:21:52 A -- features.

12 10:22:04 Q Did you do any designing of administrative

13 10:22:06 tools at that time?

14 10:22:10 A I did not personally.

15 10:22:17 Q Did anyone who reported to you?

16 10:22:22 A At what time?

17 10:22:23 Q In October 2005, when you began working at

18 10:22:26 YouTube.

19 10:22:28 A No one reported to me in October of 2005.

20 10:22:30 Q Okay. With whom were you employed before you

21 10:22:46 began work at YouTube?

22 10:22:52 A Adzaar.

23 10:22:55 Q And how long did you work at Adzaar?

24 10:23:01 A I believe from about August of 2005 to early

25 10:23:15 October 2005.

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10:23:17 Q Okay. What were your duties there?

10:23:23 A Oh, my gosh. I don't recall specifically.

10:23:26 Q Okay. What was your salary there?

10:23:35 A I --

10:23:37 Q You can approximate.

10:23:39 A I believe it was 75,000 a year.

10:23:43 Q Okay. Did you own any stock in Adzaar?

10:23:45 MR. KRAMER: Objection; the question is

10:23:46 vague.

10:23:47 THE WITNESS: Can you -- can you be more

10:23:49 specific?

10:23:49 MR. DESANCTIS: Q. Well, is there something

10:23:51 about that that you -- what about that don't you

10:23:55 understand? Did you own any stock in Adzaar?

10:23:57 A What -- what do you mean by "own"?

10:24:01 Q Did you own any options?

10:24:04 A I don't recall.

10:24:04 Q Okay. Did you own any capital stock, shares

10:24:12 of stock?

10:24:13 A I don't recall.

10:24:13 Q Okay. Where did you work before Adzaar?

10:24:19 A PayPal.

10:24:20 Q What were your duties there?

10:24:25 A At what point in time?

DUNTON

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2 10:24:27 Q How long were you at PayPal?

3 10:24:31 A I believe I was there from about 2001 to

4 10:24:36 2005.

5 10:24:36 Q Okay. Did you have any product management
6 10:24:45 role there?

7 10:24:49 A My -- at the time I left, my role was in a
8 10:24:55 team called Product Planning.

9 10:24:58 Q What did that involve?

10 10:25:00 A That involved working with various teams to
11 10:25:06 plan and schedule resources for product initiatives.

12 10:25:10 Q Okay. And what was your salary at PayPal at
13 10:25:22 the time you left?

14 10:25:27 A I don't recall.

15 10:25:27 Q Okay. Approximately?

16 10:25:32 A My base salary?

17 10:25:33 Q Uh-huh.

18 10:25:35 A It was approximately -- probably around
19 10:25:42 120,000 a year.

20 10:25:49 Q Did you receive bonuses annually?

21 10:25:51 A I did, yes.

22 10:25:52 Q Do you recall approximately what was the size
23 10:25:55 of your last bonus?

24 10:25:58 A No, I do not.

25 10:25:59 Q Did you own options to purchase stock at

DUNTON

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2 10:26:09 PayPal?

3 10:26:13 A I did.

4 10:26:13 Q Do you recall what those were worth at the

5 10:26:15 time you left PayPal?

6 10:26:19 A I do not.

7 10:26:20 Q Okay. I want to go back to the time that you

8 10:26:34 were -- I'm sorry.

9 10:26:35 With whom were you employed before PayPal?

10 10:26:43 A IndyMac Bank.

11 10:26:45 Q I'm sorry?

12 10:26:47 A IndyMac Bank.

13 10:26:49 Q What is that?

14 10:26:51 A It was an online banking company.

15 10:26:55 Q Okay. And did you have product management

16 10:26:58 responsibilities there?

17 10:27:04 A How would you define "product management

18 10:27:06 responsibilities"?

19 10:27:07 Q In the same way that we've been talking about

20 10:27:09 them with respect to your duties at YouTube.

21 10:27:11 A My job at IndyMac was a web producer.

22 10:27:18 Q What did that involve?

23 10:27:19 A That involved working with customers within

24 10:27:29 the company, as well as designers and front-end

25 10:27:34 engineers, the consumer banking portion of the

DUNTON

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2 10:27:39 website.

3 10:27:40 Q Okay. And when were you employed there?

4 10:27:50 A I don't remember specifically.

5 10:27:51 Q Do you remember for approximately how long?

6 10:27:55 A I believe two years. About two years.

7 10:27:58 Q Okay. Okay. I'd like to go back to your

8 10:28:06 time at YouTube. We talked about when you started in

9 10:28:09 October 2005, and your testimony was that at that time

10 10:28:12 nobody reported to you.

11 10:28:14 Does that accurately restate your testimony?

12 10:28:16 A I don't believe anyone reported to me in

13 10:28:18 October of 2005.

14 10:28:19 Q Okay. By the time Google purchased YouTube

15 10:28:24 in 2006, were -- did people report to you?

16 10:28:31 A Yes.

17 10:28:31 Q Approximately how many?

18 10:28:40 A I don't remember specifically. Probably

19 10:28:44 around 20 to 25.

20 10:28:46 Q And what was your title at that time?

21 10:28:50 A Director of Product Development.

22 10:28:52 Q And what were your duties at that time as

23 10:28:56 Director of Product Development?

24 10:28:59 A At the time of the Google acquisition, my

25 10:29:04 duties were to work with and manage the designers,

DUNTON

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2 10:37:27 Q Okay. The third line reads "Accomplishments:
3 10:37:42 Please summarize your overall performance and most
4 10:37:46 significant accomplishments this year."

5 10:37:50 Then you responded "From 2006 through first
6 10:37:53 quarter of 2007 I managed the entire core product
7 10:37:57 development organization which consisted of roughly 35
8 10:38:00 product managers, engineers, user experienced
9 10:38:04 designers and content editors."

10 10:38:08 Is that a correct statement of your duties
11 10:38:12 from 2006 through the first quarter of 2007?

12 10:38:23 A From 2006 to 2007, I did manage a product
13 10:38:30 development organization which consisted of product
14 10:38:33 managers, engineers, designers, and content editors.

15 10:38:39 Q Okay. What do the content editors do?

16 10:38:45 MR. KRAMER: The question is vague.

17 10:38:47 THE WITNESS: Can you be more specific,
18 10:38:48 please?

19 10:38:48 MR. DESANCTIS: Q. Well, you managed content
20 10:38:51 editors; correct?

21 10:38:55 A At a certain point in time, I managed people
22 10:38:59 we referred to as content editors.

23 10:39:02 Q Okay. And I'm asking what the people -- what
24 10:39:04 were the duties of the people who you referred to as
25 10:39:07 "content editors"?

DUNTON

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2 10:39:10 A They were responsible for interacting with
3 10:39:15 the community. They were generally the voice to the
4 10:39:21 community. They were also responsible for choosing
5 10:39:28 videos that would be featured on the YouTube.com
6 10:39:33 Homepage.

7 10:39:33 Q Okay. It also says -- it also includes
8 10:39:50 engineers in the list of employees that you managed.

9 10:39:59 Did you manage all engineers at YouTube
10 10:40:03 between 2006 and the first quarter of 2007?

11 10:40:07 A I did not.

12 10:40:08 Q Okay. Which engineers did you manage?

13 10:40:12 A I managed the engineers who were on the core
14 10:40:17 product team.

15 10:40:19 Q And how many were there?

16 10:40:22 A I cannot tell you.

17 10:40:24 Q Did it change over time?

18 10:40:28 A It -- yes, it changed over time.

19 10:40:32 Q Was Brad Heilbrun one of them?

20 10:40:35 A No.

21 10:40:35 Q Was Matt Rizzo one of them?

22 10:40:37 A Yes.

23 10:40:40 Q Brad Heilbrun was an engineer at YouTube;
24 10:40:43 correct?

25 10:40:44 A Brad Heilbrun is a system administrator at

1 DUNTON

2 10:40:48 YouTube.

3 10:40:48 Q System administrator.

4 10:40:50 Was he under -- did you manage Brad Heilbrun

5 10:40:54 as assistant administrator?

6 10:40:56 A I did not.

7 10:40:56 Q Okay. I actually need a very short break. I

8 10:41:20 actually need a very short break, Ms. Dunton. Could

9 10:41:22 we take a five-minute break?

10 10:41:24 A Yes, of course.

11 10:41:25 Q Okay.

12 10:41:25 THE VIDEOGRAPHER: The time is 10:41 a.m.

13 10:41:27 We're off the record.

14 10:41:28 (Recess taken.)

15 10:48:17 THE VIDEOGRAPHER: The time is 10:48 a.m.

16 10:48:20 We're back on the record.

17 10:48:22 MR. DESANCTIS: Okay.

18 10:48:31 Q Ms. Dunton, I'd like to focus your attention

19 10:48:34 back on the period of late 2005, early 2006.

20 10:48:41 A Okay.

21 10:48:41 Q So that is pre -- that is before the

22 10:48:44 acquisition of YouTube by Google; correct?

23 10:48:48 A That is correct.

24 10:48:49 Q Okay. Do you recall having conversations

25 10:48:51 with others at YouTube around that time about the

1 DUNTON

10:52:06 2 A Correct.

10:52:06 3 Q Okay. Do you use instant messaging with your
10:52:12 4 colleagues at work frequently?

10:52:14 5 MR. KRAMER: Objection with respect to the
10:52:18 6 phrase "at work." It's vague.

10:52:21 7 MR. DESANCTIS: I'm sorry.

10:52:22 8 Q Do you use instant messaging with colleagues
10:52:26 9 at Google frequently?

10:52:30 10 A I do.

10:52:31 11 Q Okay. And did you use instant messaging with
10:52:37 12 colleagues at YouTube before it was purchased by
10:52:37 13 Google?

10:52:42 14 A I did.

10:52:42 15 Q Okay. Your instant message user name is
10:52:46 16 Maryrose Dunton; correct?

10:52:48 17 A Correct. My AIM user name is Maryrose
10:52:53 18 Dunton.

10:52:54 19 Q What do you mean by "AIM user name"?

10:52:57 20 A My A -- that's what I use for IM. So my AOL
10:53:02 21 user name.

10:53:02 22 Q What is AIM?

10:53:04 23 A I believe it's an acronym for AOL, An Instant
10:53:08 24 Messenger.

10:53:09 25 Q I see.

1 DUNTON

10:53:10 2 Is that the program you use?

10:53:13 3 A Yes.

10:53:23 4 Q Do you use a program -- an instant message
10:53:27 5 prompt called ADIUM?

10:53:29 6 A Yes, it -- I should have been more specific.
10:53:31 7 ADIUM is the program. AOL is the account.

10:53:39 8 Q Okay. And did you install ADIUM on your
10:53:43 9 computer?

10:53:46 10 A I don't recall.

10:53:50 11 Q Okay. Did you instant message with Steve
10:53:56 12 Chen?

10:53:58 13 A Yes.

10:53:59 14 Q And his user name is Tuna Warrior; correct?

10:54:05 15 A That is correct.

10:54:07 16 Q And do you instant message with Brad
10:54:10 17 Heilbrun?

10:54:12 18 A Yes.

10:54:12 19 Q And his instant message name is, I'm just
10:54:15 20 going to spell it, Nurblied; correct?

10:54:20 21 A Yes.

10:54:20 22 Q Which is Heilbrun spelled backward.

10:54:25 23 A Correct, yes. Most people don't get that.

10:54:29 24 Q Do you instant message with Matt Rizzo?

10:54:32 25 A I do.

1 DUNTON

10:54:32 2 Q What is his instant -- IM user name?

10:54:36 3 A I believe it's Matador.

10:54:39 4 Q Okay. Are you aware that your ADIUM program
10:54:48 5 was saving all of your instant messages?

10:54:50 6 A No.

10:54:51 7 Q You're not aware of that now?

10:54:56 8 MR. KRAMER: Let me object to the extent the
10:55:01 9 question calls for the disclosure of conversations the
10:55:03 10 witness may have had with counsel.

10:55:05 11 Excluding those conversations, Ms. Dunton,
10:55:12 12 you can answer the question.

10:55:14 13 THE WITNESS: I was not aware that my chat
10:55:16 14 was being saved.

10:55:16 15 MR. DESANCTIS: Okay.

10:55:22 16 Q Do you know whether they are still being
10:55:24 17 saved?

10:55:24 18 A I do not.

10:55:30 19 Q But they were being saved; correct?

10:55:31 20 MR. KRAMER: Same instruction.

10:55:33 21 THE WITNESS: I did -- I did not know that it
10:55:35 22 was being saved.

10:55:35 23 MR. DESANCTIS: Q. As you sit here today,
10:55:37 24 you do not know whether your IM messages formally were
10:55:42 25 being saved?

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1 DUNTON

12:03:10 2 A I do not. Some time in 2006.

12:03:12 3 Q Okay. Do you know what you found?

12:03:19 4 A No.

12:03:22 5 Q Okay. Let me direct your attention to what's
12:03:34 6 been marked as Dunton Exhibit 5.

12:03:37 7 (Document marked Dunton Exhibit 5
12:03:40 8 for identification.)

12:03:40 9 MR. DESANCTIS: I would direct your attention
12:03:41 10 to page two of the document.

12:03:51 11 MR. KRAMER: Same objection and same motion
12:03:52 12 with respect to the use of this document.

12:03:54 13 Counsel, can you just tell me what this first
12:03:56 14 page is? I've never seen it before.

12:03:58 15 MR. DESANCTIS: The first page is the
12:04:00 16 metadata printed directly out of what you produced.

12:04:07 17 MR. KRAMER: Would the -- so what Bates
12:04:09 18 number does the first page have on it?

12:04:12 19 MR. DESANCTIS: Metadatas don't have Bates
12:04:15 20 numbers.

12:04:15 21 MR. KRAMER: Okay. So there is a Bates
12:04:17 22 number on this one, so -- so your -- you're attaching
12:04:25 23 this metadata to this document that you generated off
12:04:29 24 of the electronic native files; is that -- is that --
12:04:33 25 am I -- is that right?

1 DUNTON

12:04:35 2 MR. DESANCTIS: We printed out the metadata
12:04:37 3 that you provided, and that is what is here.

12:04:40 4 MR. KRAMER: Okay. And the second page is
12:04:42 5 blank, and the third page is blank?

12:04:47 6 MR. DESANCTIS: I'm sorry?

12:04:48 7 MR. KRAMER: And the second and third pages
12:04:50 8 are blank?

12:04:50 9 MR. DESANCTIS: No, that must be in your
12:04:52 10 copy. That must be a photocopying error.

12:04:56 11 Q Is that the same with yours, Ms. Dunton?

12:04:58 12 A No, there looks like there's stuff on here,
12:05:02 13 little pictures.

12:05:03 14 Q Okay. Can we get another copy?

12:05:05 15 MR. KRAMER: I just took those two pages out.

12:05:08 16 MR. DESANCTIS: Okay.

12:05:23 17 MR. KRAMER: Okay.

12:05:51 18 MR. DESANCTIS: Q. Turning to page two of
12:05:52 19 the document, Ms. Dunton.

12:05:54 20 A Yes.

12:05:55 21 Q This is an instant message exchange between
12:05:59 22 tunawarrior, which we've established is Steve Chen,
12:06:03 23 and maryrosedunton, which we've established as you;
12:06:06 24 correct?

12:06:06 25 A That's what it looks like to be, yes.

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1 DUNTON

12:06:17 2 Q Okay. Will you please review -- do you want
12:06:19 3 to review the document before I ask you questions
12:06:22 4 about it?

12:06:23 5 MR. KRAMER: I've asked her not to review the
12:06:26 6 entirety of the document in light of the concerns that
12:06:29 7 I've expressed on this record and were expressed
12:06:31 8 previously during the deposition of Mr. Schaffer.

12:06:33 9 If there's a specific part of this document
12:06:35 10 you'd like to direct her attention to, please do.

12:06:37 11 MR. DESANCTIS: Okay. I just want to make
12:06:39 12 clear for the record that you're directing the witness
12:06:41 13 not to read her own instant message exchange.

12:06:46 14 MR. KRAMER: I'm objecting --

12:06:47 15 MR. DESANCTIS: Should she be embarrassed by
12:06:50 16 her own exchange?

12:06:52 17 MR. KRAMER: Not necessarily, no. I'm
12:06:54 18 objecting to your tactic of putting the document in
12:06:57 19 front of her in an effort to embarrass and intimidate
12:07:00 20 her and asking her to review the whole thing so that
12:07:03 21 she has to deal with stuff that has absolutely nothing
12:07:07 22 to do with this case.

12:07:07 23 You know it because we wrote you about this
12:07:10 24 in detail and provided you with redacted chat
12:07:13 25 transcripts that you could use for purposes of this

1 DUNTON

12:07:15 2 case.

12:07:15 3 No, I do not want her to review the entirety
12:07:17 4 of the chat transcripts for precisely the reasons that
12:07:20 5 we've asserted on this record and in writing to you in
12:07:23 6 advance.

12:07:26 7 MR. DESANCTIS: And you're instructing her
12:07:27 8 not to read the document?

12:07:29 9 MR. KRAMER: Counsel, I think I've allowed
12:07:30 10 you plenty of leeway.

12:07:32 11 MR. DESANCTIS: I'm simply asking are you
12:07:34 12 instructing her --

12:07:34 13 MR. KRAMER: Yes, I'm instructing --

12:07:36 14 MR. DESANCTIS: -- not to read the document?

12:07:39 15 MR. KRAMER: -- her not to read the entirety
12:07:41 16 of the document.

12:07:42 17 MR. DESANCTIS: Okay.

12:07:45 18 MR. KRAMER: If there is something you want
12:07:46 19 to point her to, please go ahead and do so.

12:08:04 20 MR. DESANCTIS: Q. I would like to point you
12:08:06 21 to page eight of the document which should be the last
12:08:09 22 page of the document.

12:08:20 23 Do you have that in front of you?

12:08:22 24 A I do.

12:08:23 25 Q Okay. It begins with you, maryrosedunton,

1 DUNTON

12:08:31 2 saying "oh, so by the way, after our discussion on
12:08:34 3 friday, I did a little exercise on friday and went
12:08:36 4 through all the most viewed/most discussed/top
12:08:40 5 favorites/top rated to try and figure out what
12:08:43 6 percentage is or has copyrighted material."

12:08:50 7 Do you see that?

12:08:51 8 A I do.

12:08:52 9 Q It then reads "it was over 70%."

12:09:00 10 Do you see that?

12:09:01 11 A I do.

12:09:01 12 Q Does -- and you then say -- first of all,
12:09:10 13 when we're talking about -- when you are talking about
12:09:12 14 "most viewed/most discussed/top favorite/top rated,"
12:09:15 15 you're talking about videos on YouTube; correct?

12:09:19 16 A I believe what I'm talking about here, there
12:09:23 17 is a "Videos" tab on YouTube, and on that we show or
12:09:29 18 have shown the most viewed, most discussed, how many
12:09:34 19 number of comments, top favorite, and top rated videos
12:09:38 20 for that day.

12:09:41 21 Q And that's what you went through, the most
12:09:44 22 viewed, most discussed, top favorites, top rated
12:09:52 23 videos, and you found that over 70 percent were or
12:09:54 24 contained copyrighted material; correct?

12:09:59 25 A So I don't remember this chat specifically,

1 DUNTON

12:10:02 2 but I do remember conversations at the time about
12:10:08 3 premium content on YouTube that is professionally
12:10:12 4 produced content.

12:10:13 5 So I do have a recollection following some
12:10:19 6 discussions at looking at the most viewed, most
12:10:22 7 discussed, top rated, top favorites, we call those the
12:10:27 8 browse pages, for that day and tried to determine,
12:10:30 9 based on the video still, if it was premium content or
12:10:33 10 not.

12:10:33 11 Q And premium content is copyrighted content;
12:10:36 12 correct?

12:10:37 13 MR. KRAMER: Objection; the question is
12:10:38 14 vague.

12:10:38 15 THE WITNESS: I have no idea if premium
12:10:41 16 content is copyrighted content.

12:10:43 17 MR. DESANCTIS: Okay.

12:10:45 18 THE WITNESS: But we certainly used that term
12:10:48 19 interchangeably for a long, long time, "copyrighted,"
12:10:53 20 "premium."

12:10:53 21 MR. DESANCTIS: Okay.

12:10:59 22 Q Why were you doing this exercise?

12:11:03 23 A So I took a look at the most viewed, top
12:11:06 24 rated, et cetera, videos for that day, because there
12:11:09 25 was some discussion about premium content on YouTube,

1 DUNTON

12:11:13 2 and I wanted to see, I wanted to look for that day and
12:11:18 3 see how much -- what -- what content was being viewed
12:11:22 4 that day.

12:11:23 5 Q Did you have premium content in February
12:11:32 6 2006?

12:11:35 7 A There was certainly content I would define as
12:11:38 8 "premium" on the website in February 2006, yes.

12:11:41 9 Q In the sense that it was copyrighted,
12:11:43 10 correct, but you didn't have a separate -- an
12:11:47 11 established content category in February 2006; did
12:11:50 12 you?

12:11:50 13 MR. KRAMER: Objection to the extent that
12:11:51 14 that question includes a legal conclusion. The term
12:11:57 15 "copyrighted" is vague.

12:11:59 16 MR. DESANCTIS: Q. Ms. Dunton, is it vague
12:12:01 17 to you when I use the term "copyright"?

12:12:08 18 A Yes.

12:12:08 19 Q Why?

12:12:16 20 A I don't know that I have now or have ever had
12:12:20 21 a very good understanding of copyrights.

12:12:23 22 Q Okay. But in the instant message we've just
12:12:36 23 read, you concluded that over 70 percent of the most
12:12:44 24 viewed, most discussed, top favorite, and top rated
12:12:48 25 videos were copyrighted material; correct?

1 DUNTON

12:12:51 2 A No.

12:12:52 3 Q Is that not what the document says,

12:12:54 4 Ms. Dunton?

12:12:56 5 A I can tell you at one time I looked at the
12:13:00 6 most viewed, top rated content for that day and
12:13:06 7 determined that it was premium content. I -- I have
12:13:09 8 to add, whatever is on the most viewed varies wildly,
12:13:15 9 wildly depending on whatever is going on, the popular
12:13:18 10 culture in the news at the time.

12:13:20 11 So to look at that at any point in time and
12:13:23 12 try to make a determination on what is generally being
12:13:26 13 viewed on YouTube would be incorrect.

12:13:29 14 I'm sure if you looked at it yesterday, it
12:13:32 15 would be all Barrack Obama, and I can look at it
12:13:35 16 yesterday and say "Everything on YouTube is
12:13:37 17 Barrack Obama." So when I did this that day, I looked
12:13:41 18 at the most viewed, most discussed, top rated for that
12:13:44 19 day, and I believe I came, by looking at the stills,
12:13:47 20 the determination that around 70 percent of it was
12:13:50 21 premium content.

12:13:51 22 Q But you didn't say premium content in this
12:13:53 23 IM. You said "copyrighted material"; correct?

12:13:56 24 MR. KRAMER: The document speaks for itself.
12:13:58 25 You can answer.

1 DUNTON

12:13:58 2 THE WITNESS: We used the term, correct or
12:14:01 3 not, interchangeably. "Copyright" and "premium."

12:14:05 4 MR. DESANCTIS: Q. Even in 2006 --

12:14:07 5 A Even --

12:14:07 6 Q -- that's your testimony?

12:14:08 7 A -- even in 2006, yes.

12:14:09 8 Q And in 2006, there was no established
12:14:12 9 category of content on YouTube called "premium
12:14:14 10 content"; was there?

12:14:15 11 MR. KRAMER: Objection; the question is
12:14:16 12 vague.

12:14:16 13 THE WITNESS: What do you mean by
12:14:17 14 "established category of content"?

12:14:19 15 MR. DESANCTIS: Q. Was there content on the
12:14:21 16 website that was treated differently because it was
12:14:27 17 premium?

12:14:29 18 A We didn't treat any content differently in
12:14:31 19 2006.

12:14:32 20 Q Okay. Let's move on in the exchange.

12:14:42 21 After you said it was over 70 percent
12:14:44 22 copyrighted material, you say "hah shit never mind."

12:14:52 23 Were you hoping that -- you were hoping that
12:14:56 24 the number that you found would be lower than
12:14:58 25 70 percent; weren't you?

1 DUNTON

12:15:00 2 A I have no idea what I was hoping at the time
12:15:03 3 that I wrote this.

12:15:04 4 Q Okay. And Steve Chen responds, "hahaha."
12:15:14 5 That's the convention in instant message for laughing;
12:15:19 6 right?

12:15:20 7 A Yes.

12:15:20 8 Q So he thinks it's funny that over 70 percent
12:15:24 9 of the most viewed, most discussed, top favorite, top
12:15:28 10 rated videos on YouTube that day were copyrighted?

12:15:33 11 MR. KRAMER: Calls for speculation.

12:15:34 12 THE WITNESS: So a couple of things. I said,
12:15:40 13 from looking at the video stills, I thought over
12:15:43 14 70 percent or 70 percent or whatever it is were
12:15:45 15 premium. I have no idea what Steve Chen thought at
12:15:48 16 the time.

12:15:48 17 MR. DESANCTIS: Okay.

12:15:49 18 Q But all he responded -- first of all, you
12:15:52 19 didn't say premium. You said "copyrighted"; correct?

12:15:56 20 MR. KRAMER: Document speaks for itself.

12:15:58 21 MR. DESANCTIS: Okay.

12:15:59 22 Q And Steve responded "hahaha"; correct?

12:16:07 23 A Steve says, "hahaha" in this chat; that is
12:16:12 24 correct.

12:16:12 25 Q Okay. When you keep saying "premium

1 DUNTON

12:16:14 2 content," what do you mean?

12:16:15 3 A I mean content that looks to be
12:16:18 4 professionally produced. It's glossy. It's not what
12:16:22 5 we would define at the time as user-generated content.

12:16:26 6 Q Okay. Steve then says "maryrose, you're
12:16:35 7 fired." But that was in gest; correct?

12:16:46 8 A I imagine it -- I imagine it was in gest,
12:16:48 9 correct.

12:16:49 10 Q He didn't fire you; did he?

12:16:50 11 A Steve Chen did not fire me.

12:16:52 12 Q Okay. Then you respond "oh, what I meant to
12:16:55 13 say after I found that 70%, I went and flagged it all
12:16:58 14 for review."

12:16:59 15 What does it mean to flag it for review?

12:17:03 16 A At the time, it meant it goes into a queue
12:17:07 17 that somebody at YouTube reviews.

12:17:13 18 Q Reviews for what purpose?

12:17:15 19 A They can review it for many different
12:17:17 20 purposes. Things are flagged because users find them
12:17:21 21 inappropriate. Anything that users feel break our
12:17:24 22 Terms of Use.

12:17:25 23 Q Okay. But you did not flag it all for
12:17:31 24 review; did you?

12:17:33 25 A I don't know. I don't believe I flagged the

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1 DUNTON

12:17:39 2 videos I saw on the most viewed for review.

12:17:43 3 Q Okay. This is a joke; right? You're being

12:17:50 4 sarcastic --

12:17:51 5 A Which part?

12:17:53 6 Q -- in the IM?

12:17:54 7 A Which part?

12:17:55 8 Q That you went and flagged it all for review?

12:17:58 9 A I'm probably being sarcastic, yes.

12:18:00 10 Q And Steve writes back "Oh! Of course."

12:18:05 11 He's being sarcastic back; correct?

12:18:10 12 MR. KRAMER: Calls for speculation.

12:18:12 13 THE WITNESS: I don't know if Steve is being
12:18:14 14 sarcastic or not.

12:18:15 15 MR. DESANCTIS: Q. Do you think he actually
12:18:17 16 thought that you flagged all 70 percent for review?

12:18:24 17 A I don't know what he thought.

12:18:25 18 Q Okay. Was there a flag for copyright
12:18:38 19 infringement in 2006, in February of 2006?

12:18:42 20 A On the YouTube.com website?

12:18:45 21 Q On the YouTube -- yes.

12:18:48 22 A On the user facing --

12:18:52 23 Q As an admin tool.

12:19:00 24 A I don't recall.

12:19:01 25 Q Okay. Was it the practice of employees at

1 DUNTON

2 A F T E R N O O N S E S S I O N

3

13:15:52 4 THE VIDEOGRAPHER: The time is 1:15 p.m.

13:15:56 5 We are back on the record.

13:15:57 6 MR. DESANCTIS: Q. Ms. Dunton, you mentioned

13:16:08 7 something earlier today called featured videos. Can

13:16:13 8 you please explain what featured videos are?

13:16:17 9 A Featured videos are videos on the YouTube.com

13:16:22 10 Homepage that are selected from our -- from our base

13:16:34 11 of videos.

13:16:35 12 Q Selected for what purpose?

13:16:39 13 A To highlight, to show entertaining,

13:16:47 14 relevance, content for our community.

13:16:51 15 Q Okay. When did the featured videos feature

13:16:54 16 first appear on the site?

13:16:57 17 A I don't know when it first appeared. It --

13:16:59 18 it was already there when I started at YouTube.

13:17:01 19 Q Okay. Were you involved at any time in

13:17:10 20 deciding which particular videos would be used as

13:17:13 21 featured videos?

13:17:15 22 A Yes.

13:17:15 23 Q How? What -- can you -- sorry. Let me

13:17:21 24 withdraw that.

13:17:21 25 Can you describe your involvement with that?

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1 DUNTON

13:17:26 2 A For some period of time in YouTube's history,
13:17:30 3 I would -- I would find videos to feature on the
13:17:36 4 YouTube.com Homepage.

13:17:37 5 Q And you actually spent a lot of time doing
13:17:40 6 that; didn't you?

13:17:41 7 A What do you mean by "a lot"?

13:17:44 8 Q Were you up -- up late a lot of nights
13:17:49 9 looking for featured videos?

13:17:51 10 A I was -- I was up late almost every night in
13:17:54 11 YouTube's history working in some way, shape, or form,
13:17:57 12 so....

13:17:58 13 Q Let's -- I need this one; okay.

13:18:03 14 MS. MAGUIRE: Yeah.

13:18:11 15 MR. DESANCTIS: Okay.

13:18:30 16 (Document marked Dunton Exhibit 6
13:18:30 17 for identification.)

13:18:30 18 MR. DESANCTIS: Q. Let me show you what's
13:18:31 19 been marked as Exhibit 6. Hand that out.

13:18:47 20 This is an e-mail exchange between you and
13:18:49 21 someone named Jamie Byrne. It's dated September 7th,
13:18:55 22 2006, Bates No. GOO001-510555.

13:19:03 23 Can you please review this document,
13:19:05 24 Ms. Dunton?

13:19:06 25 A Yes.

1 DUNTON

13:19:25 2 Q I just wanted to direct your attention --

13:19:28 3 A I'm sorry. I just want to finish reading it
13:19:30 4 real quick.

13:19:31 5 Q Okay.

13:19:44 6 A Okay.

13:19:46 7 Q I just wanted to direct your attention to
13:19:49 8 your e-mail to Jamie Byrne that starts in the middle
13:19:55 9 of the page, and it begins "Hi, I'm up at 3AM doing my
13:19:59 10 normal hunting for featured videos."

13:20:01 11 So was it a normal activity for you to hunt
13:20:06 12 for featured videos, as you say, late into the night?

13:20:09 13 MR. KRAMER: Objection; vague as to time.

13:20:13 14 THE WITNESS: I -- I would try and feature a
13:20:16 15 new video, maybe a couple of new videos, every day.

13:20:20 16 MR. DESANCTIS: Okay. Okay.

13:20:25 17 Q Now, how would it be determined -- how would
13:20:28 18 you determine which videos would appear on the site as
13:20:31 19 featured videos?

13:20:35 20 A I would kind of take note of what was popular
13:20:40 21 and, you know, what's going on in pop culture, the
13:20:44 22 news. I would often do searches. That sounds funny,
13:20:47 23 but I'd often do searches on the website for sort
13:20:52 24 of -- for adjectives. I'd look for things like
13:20:55 25 "awesome," "funny" or "silly," and look for videos

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1 DUNTON

13:20:59 2 that were, I thought, were going to be entertaining,
13:21:01 3 and sort of highlighted. You know, the best of
13:21:04 4 YouTube, and I thought the community would like, that
13:21:06 5 they would enjoy watching.

13:21:09 6 Q And when you were looking through videos,
13:21:25 7 were you looking through the entirety of the videos on
13:21:29 8 the YouTube site, or were you -- would you only search
13:21:32 9 perhaps what was posted that day?

13:21:37 10 A Oh, my gosh. I couldn't -- I -- I couldn't
13:21:40 11 tell you. I would -- I would do searches, yes.

13:21:42 12 Q Okay.

13:21:43 13 A In a search box. Just like a regular user, I
13:21:46 14 would type in "awesome," "funny" and just look at
13:21:48 15 whatever the results were.

13:21:49 16 Q And when you found one you wanted to use as a
13:21:51 17 featured video, what would you -- what would you do in
13:21:56 18 order to make it actually appear as a featured video
13:21:59 19 on the site?

13:22:00 20 A We had a tool. Actually, I'll step back.

13:22:02 21 Initially, we didn't have a tool, and I would
13:22:05 22 send them to Steve, and Steve would have to hard code
13:22:07 23 them into the Homepage.

13:22:08 24 Q Is -- sorry.

13:22:11 25 Steve is Steve Chen?

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1 DUNTON

13:22:13 2 A Yes. I'm sorry. Steve Chen.

13:22:14 3 Q And when you said early on, about what period
13:22:17 4 are you talking about before you had a tool?

13:22:19 5 A I don't remember specifically. I know we
13:22:20 6 didn't yet have a tool when I started.

13:22:23 7 Q Okay.

13:22:25 8 A But some time probably not too long
13:22:27 9 afterwards we had a tool where I would -- I would put
13:22:30 10 in the link, the unique identifier for that video, and
13:22:36 11 it would appear on the Homepage.

13:22:39 12 Q I see.

13:22:40 13 So -- and that would have been -- okay. I
13:22:51 14 see.

13:22:51 15 So the process was automated at some point?

13:22:54 16 A Which process?

13:22:55 17 Q The process of a video becoming a featured
13:22:59 18 video became automated at some point rather than Steve
13:23:03 19 having to key in the code?

13:23:04 20 A So -- so at one point Steve had to -- either
13:23:10 21 he or I would find the videos, and he would have to
13:23:12 22 hard code it into the -- into the YouTube Homepage.
13:23:16 23 So actually go into the HTML and position that video.

13:23:19 24 Some point after that, we developed a tool by
13:23:22 25 which I could put in the unique identifier for that

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1 DUNTON

13:23:25 2 video, and then it would appear on the Homepage.

13:23:27 3 Q Okay. And you said just now, I believe, that

13:23:29 4 Steve would also find videos to use for featured

13:23:33 5 videos?

13:23:34 6 A At some point he did, that's correct.

13:23:36 7 Q Okay. Did anyone else?

13:23:39 8 A At which -- at which point in time?

13:23:41 9 Q Any point in time.

13:23:43 10 A Well, anybody, even our user base, could send
13:23:49 11 in suggestions for featured videos, and yes, then at
13:23:54 12 some point it was no longer my responsibility to find
13:23:57 13 featured videos.

13:24:00 14 Q And did other employees at YouTube -- was it
13:24:06 15 the responsibility of anyone else at YouTube to search
13:24:09 16 for featured videos?

13:24:12 17 MR. KRAMER: What time?

13:24:13 18 MR. DESANCTIS: After you.

13:24:14 19 THE WITNESS: After me. Yes, it -- after it
13:24:18 20 was no longer my responsibility to feature videos on
13:24:21 21 the Homepage, there were other employees who did that.

13:24:24 22 MR. DESANCTIS: Q. And who did it after you?

13:24:31 23 A Mia Quagliarello.

13:24:37 24 Q Anyone else?

13:24:38 25 A Not that I could think of.

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1 DUNTON

13:24:40 2 Q Do you know who did it before you?

13:24:44 3 A Steve did it, and Kevin Donahue did for a
13:24:48 4 little while as well.

13:24:48 5 Q Anyone else that you know of?

13:24:50 6 A Not that I can think of.

13:24:55 7 Q Okay. Now, when you said before the admin
13:24:57 8 tool --

13:24:59 9 MR. KRAMER: I don't think she said admin
13:25:01 10 tool.

13:25:01 11 MR. DESANCTIS: I'm sorry?

13:25:02 12 MR. KRAMER: I don't think she said admin
13:25:04 13 tool.

13:25:04 14 MR. DESANCTIS: Q. Before the tool, you said
13:25:07 15 Steve would go in and hard code it. By that, did you
13:25:11 16 mean he would change the source code for the Homepage?

13:25:15 17 A I meant he would take -- he would take the
13:25:20 18 URL for the featured video, and he would have to --
13:25:24 19 yes, he would have to change the source code for the
13:25:28 20 Homepage. He would have to add in what videos we
13:25:31 21 wanted to appear.

13:25:31 22 Q Okay. And once the tool was implemented, it
13:25:36 23 would change -- the tool would change the source code
13:25:39 24 automatically --

13:25:39 25 MR. KRAMER: Calls for speculation.

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1 DUNTON

15:13:24 2 A And I'm saying we, as far as I know and can
15:13:30 3 recollect, we don't know if something is authorized or
15:13:35 4 unauthorized until we receive a takedown notice.

15:13:41 5 Q Okay. Was there -- in the period of 2005,
15:13:47 6 are you aware of YouTube removing videos without an
15:13:56 7 ND -- without a DMCA notice because the videos might
15:14:04 8 be on YouTube without the content owner's permission?

15:14:10 9 A At some point in our history, early on, I
15:14:13 10 can't tell you exactly when, we did, "we" not me
15:14:18 11 personally, but we did try. We did do some period of
15:14:24 12 review where we proactively removed videos that we
15:14:29 13 thought there might be the potential for it to be
15:14:32 14 unauthorized on the website.

15:14:35 15 Q Why -- I'm sorry. Are you finished?

15:14:37 16 A Yes, I'm finished.

15:14:49 17 Q Why would YouTube proactively -- why did
15:14:52 18 YouTube proactively remove videos that you thought
15:14:57 19 might have the potential for it to be unauthorized?

15:15:01 20 A Because we were trying really, really hard to
15:15:03 21 respect the rights of copyright holders.

15:15:09 22 Q But you -- did there come a time when YouTube
15:15:12 23 stopped doing that?

15:15:14 24 A Yes, there did, because we also found we were
15:15:17 25 really, really bad at it. We were really bad at

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1 DUNTON

15:15:23 2 trying to figure out just based on looking at a piece
15:15:26 3 of content who owned the rights. I know we
15:15:29 4 erroneously took down pieces of content all the time
15:15:32 5 that, in fact, the person who owned it uploaded, so
15:15:37 6 yes, we tried to do that. We tried to do that.
15:15:39 7 We wanted to -- we wanted to respect
15:15:42 8 copyright owners. We wanted to -- if we saw something
15:15:47 9 where there was the potential for it to be
15:15:48 10 unauthorized, we wanted to -- this is early on -- we
15:15:50 11 wanted to do what we thought was the right thing, but
15:15:53 12 we found out very quickly this was not -- this did not
15:15:56 13 work, because we were taking down content all the
15:15:59 14 time, premium content, as we talked about, that in
15:16:02 15 fact was uploaded by the right holder. So we stopped.
15:16:09 16 We stopped doing that.

15:16:20 17 Q Do you have any estimate of how many videos
15:16:24 18 were removed in the manner you were just describing
15:16:29 19 without a DMCA notice?

15:16:33 20 A I have no idea.

15:16:36 21 Q Can you estimate for me? Would it be closer
15:16:39 22 to ten or closer to 10,000?

15:16:42 23 A It -- it was not my job. It was never my job
15:16:48 24 to respond to those videos or take down those videos,
15:16:51 25 so I have absolutely no idea.

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1 DUNTON

15:16:52 2 Q And how -- you said you were doing a bad job
15:16:55 3 at it. How do you know you were doing a bad job?

15:16:57 4 A We were doing a bad job because we were
15:16:59 5 erroneously taking down videos that people who owned
15:17:02 6 the rights to, including professional content
15:17:06 7 creators, had uploaded.

15:17:08 8 Q But how would you know that you made a
15:17:12 9 mistake?

15:17:12 10 A Because they would complain to us.

15:17:15 11 Q Okay. And you didn't like it when they
15:17:17 12 complained to you; correct?

15:17:22 13 A I don't know that I personally had any
15:17:24 14 feeling on it.

15:17:27 15 Q Well, they were your users; right?

15:17:31 16 A Anybody who uses the YouTube site is a user.

15:17:33 17 Q Okay. And was it YouTube's, you know,
15:17:40 18 objective to keep its users happy?

15:17:46 19 A Within reason, yes.

15:17:48 20 Q Okay. And when users' videos were taken down
15:17:58 21 mistakenly by you, meaning YouTube --

15:18:02 22 A Uh-huh.

15:18:02 23 Q -- it made them unhappy, and they complained;
15:18:05 24 correct?

15:18:08 25 A If the person who uploaded a video owned the

1 DUNTON

15:18:10 2 rights --

15:18:11 3 Q Right.

15:18:12 4 A -- and their content was erroneously taken
15:18:15 5 down, then yes, I would imagine that made them
15:18:17 6 unhappy.

15:18:18 7 Q Okay. And they complained?

15:18:22 8 A Yes.

15:18:22 9 Q That's how you knew?

15:18:23 10 A There were users who complained. Not to me
15:18:25 11 personally, but yes, I --

15:18:27 12 Q Well, and is that why you, YouTube, stopped
15:18:31 13 proactively removing videos, because the customers
15:18:34 14 were complaining?

15:18:37 15 A We stopped --

15:18:39 16 MR. KRAMER: Hang on one second. I'm going
15:18:40 17 to object to the extent that mischaracterizes the
15:18:42 18 testimony.

15:18:44 19 You can answer.

15:18:50 20 THE WITNESS: As far as I am aware, we
15:18:51 21 stopped proactively reviewing because we were really
15:18:55 22 bad at determining who uploaded the content and if
15:19:00 23 they had the rights to do so.

15:19:15 24 MR. DESANCTIS: Q. And that made your users
15:19:17 25 angry; correct?

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1 DUNTON

15:19:19 2 A By "users," you mean?

15:19:21 3 Q Uploaders who had their videos mistakenly
15:19:26 4 removed.

15:19:30 5 A Yes. If a user had their video mistakenly
15:19:34 6 removed, I imagine that was upsetting to them, right.
15:19:42 7 It happened. Happened all the time.

15:19:44 8 Q It happened all the time?

15:19:45 9 A It happened all the time.

15:19:46 10 Q How often?

15:19:48 11 A I can't tell you specifically how often it
15:19:50 12 happened. Like I said, it wasn't my job to take down
15:19:53 13 videos or put them back up, but it happened a lot. It
15:19:56 14 was a regular topic of conversation.

15:19:57 15 Q Like multiple times a day? I'm just trying
15:20:01 16 to get an order of magnitude.

15:20:03 17 A I can't remember. I can't remember
15:20:05 18 specifically.

15:20:24 19 Q If users didn't complain to you, would you
15:20:29 20 ever had known you were making mistakes in taking down
15:20:36 21 videos?

15:20:37 22 MR. KRAMER: Calls for speculation.

15:20:38 23 THE WITNESS: And I don't know.

15:20:40 24 MR. DESANCTIS: Q. But you do know that when
15:20:43 25 users complained, and you said they complained a lot,

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1 DUNTON

15:20:49 2 you changed your policy to stop taking down videos
15:20:54 3 that in your estimation, in YouTube's estimation, were
15:20:59 4 likely to be infringing.

15:21:02 5 MR. KRAMER: Objection; mischaracterizes the
15:21:04 6 testimony.

15:21:04 7 MR. DESANCTIS: Well, I wasn't -- I wasn't
15:21:07 8 characterizing the testimony.

15:21:12 9 THE WITNESS: I believe what I said is, we
15:21:14 10 stopped doing proactive reviewing because we were bad
15:21:19 11 at it, because it wasn't -- it wasn't possible for us
15:21:27 12 to always know who had -- who uploaded a piece of
15:21:31 13 content and whether they had the rights to do so or
15:21:33 14 not.

15:21:33 15 MR. DESANCTIS: Okay.

15:21:40 16 Q If the customer -- if your users didn't
15:21:43 17 complain, would you have stopped?

15:21:45 18 MR. KRAMER: Calls for speculation.

15:21:47 19 THE WITNESS: I have no idea.

15:21:49 20 MR. DESANCTIS: Q. Can you think of a reason
15:21:54 21 why you would have?

15:21:56 22 MR. KRAMER: You mean other than what she
15:22:00 23 testified? A reason other than --

15:22:02 24 MR. DESANCTIS: Other than that the user
15:22:04 25 complained.

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1 DUNTON

15:36:43 2 were about. That's what I personally create.

15:36:45 3 Q As you sit here today, do you think that you
15:36:48 4 could have sold YouTube for a billion dollars in 2006
15:36:56 5 if it had no premium content from the very beginning?

15:37:00 6 MR. KRAMER: Calls for speculation.

15:37:03 7 MR. DESANCTIS: It does.

15:37:03 8 Q I'm asking you if you -- if you --

15:37:07 9 A I have absolutely no idea.

15:37:08 10 Q Okay. This.

15:37:38 11 I'd like to ask you about another policy at
15:37:41 12 YouTube which is sometimes referred to as this "three
15:37:47 13 strikes and you're out policy."

15:37:48 14 Can you describe what that is?

15:37:50 15 A What it is today?

15:37:53 16 Q Sure. Start with today.

15:37:55 17 A I -- I -- I don't have knowledge of how the
15:37:58 18 policy works today.

15:38:00 19 Q Okay. Is there any period for which you do
15:38:03 20 have knowledge?

15:38:07 21 A Sure. I can tell you sort of generally my
15:38:09 22 knowledge of how the three strikes policy has worked
15:38:13 23 in the past.

15:38:13 24 Q Please do.

15:38:15 25 A That when a user -- when a user would break

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1 DUNTON

15:38:20 2 our Terms of Use, they would receive a strike against
15:38:25 3 their account. After they received three strikes, we
15:38:31 4 would close their account, remove all of their videos,
15:38:36 5 remove everything about them, and prohibit them from
15:38:41 6 coming back to the service.

15:38:43 7 Q Okay. And do you know when that policy was
15:38:51 8 begun at YouTube?

15:38:53 9 A I don't. I don't recall specifically.

15:38:54 10 Q Okay. All right.

15:39:07 11 Is having a video removed in response to an
15:39:11 12 NDM -- in response to a DMCA takedown notice grounds
15:39:15 13 for getting a strike?

15:39:20 14 MR. KRAMER: Calls for speculation.

15:39:21 15 THE WITNESS: I don't know.

15:39:22 16 MR. DESANCTIS: Q. You don't know?

15:39:28 17 A No, I don't know. You can receive a strike
15:39:31 18 for any Terms of Use violation.

15:39:34 19 Q Okay. So you can receive a strike if
15:39:38 20 someone -- if you post pornography?

15:39:41 21 A Yes.

15:39:41 22 Q You can receive a strike --

15:39:47 23 A Or, I'm sorry, I should say I don't have -- I
15:39:50 24 don't have good knowledge of how that works today. I
15:39:53 25 knew in the past you could receive a strike for any

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18:13:20 Q Okay. Okay. You got it? Okay. All right.

18:14:07 Okay.

18:14:10 (Documents marked Dunton Exhibits 19 - 20

18:14:11 for identification.)

18:14:11 MR. DESANCTIS: Q. Let me show you what I am

18:14:13 marking as Dunton exhibit -- what are we up to?

18:14:19 MS. MAGUIRE: 19.

18:14:22 MR. DESANCTIS: Q. 19, and at the same time

18:14:24 Dunton Exhibit 20.

18:14:30 A Okay.

18:14:32 Q Looking at exhibit -- I'm sorry -- looking at

18:14:44 Exhibit 19 --

18:14:47 A Okay.

18:14:48 Q -- is this another instant message exchange

18:14:52 this time between you and user name matador?

18:14:58 A It looks to be, yes.

18:14:59 Q Okay. And matador is whom?

18:15:03 A He's Matthew Rizzo.

18:15:05 Q And who is Matthew Rizzo?

18:15:07 A He's an engineer at YouTube.

18:15:08 Q Okay. Before we go through the document, do

18:15:19 you recall a feature in Claim Your Content -- in

18:15:23 Copyright Cop, the management tool we've been

18:15:25 discussing, that allowed content owners to save their

1 DUNTON

19:02:42 2 by "we can be pretty ghetto about it"?

19:02:47 3 A I don't remember this specific chat, but I'm
19:02:50 4 likely referring to the technical implementation.
19:02:58 5 Meaning -- actually, I'm not quite sure what I mean.

19:03:03 6 It -- it sounds like, from reading this, to
19:03:07 7 reuse some additional -- some existing search
19:03:10 8 functionality we have on the site.

19:03:15 9 Q And that's what you mean by "we can be pretty
19:03:18 10 ghetto about it"?

19:03:22 11 A We used that term, I know I've used that
19:03:25 12 term, to refer to reusing existing stuff.

19:03:29 13 Q Okay. And after you ask Matthew Rizzo if you
19:03:37 14 can create a saved search with alerts for the
19:03:39 15 copyright cop stuff, he responds at line "12:16:20 you
19:03:46 16 can have whatever you want, but it is just how much
19:03:49 17 time do you guys want to give to these fucking
19:03:55 18 assholes."

19:03:56 19 Did you understand -- do you understand now
19:03:58 20 that the "fucking assholes" that Matt Rizzo was
19:04:02 21 referring to were copyright owners -- I'm sorry --
19:04:06 22 content owners?

19:04:10 23 A I believe, as I said, I don't remember this
19:04:13 24 specific chat, but I believe the people that Matt was
19:04:17 25 referring to are the people who were abusing the

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1 DUNTON

19:04:21 2 features that we gave them.

19:04:26 3 Q Why do you believe that? Is there anything
19:04:29 4 in this text about abusing features?

19:04:33 5 A I haven't -- I haven't -- I've only read the
19:04:36 6 parts that you've called out to me, but I can tell you
19:04:39 7 that the Copyright Cop Content Management Tool that we
19:04:44 8 rolled out was actually severely abused by some
19:04:48 9 content owners, and yeah, that made us angry. That
19:04:54 10 was upsetting.

19:04:55 11 Q So do you actually -- are you saying you
19:04:57 12 actually remember that that -- that in this instance
19:05:02 13 that's who "fucking assholes" refer to?

19:05:07 14 A Well, like I said, I don't remember this
19:05:09 15 specific chat, but I do remember the CVP Tool, and I
19:05:16 16 remember content owners abusing it; that is, they used
19:05:20 17 it erroneously to try and take down content that was,
19:05:23 18 in fact, not theirs and -- and yes, that angered me,
19:05:28 19 and I think it angered Rizzo too.

19:05:32 20 Q Do you remember any specific examples of
19:05:50 21 content owners taking down content that was not
19:05:54 22 theirs?

19:05:54 23 A Yes.

19:05:54 24 Q What were those?

19:05:55 25 A American Idol, WWE. Those two come to mind

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1 DUNTON

19:44:02 2 Q Okay. Yet, you had the opinion in this --
19:44:15 3 expressed in this IM message, that you hoped or Mr. --
19:44:21 4 Mr. Rizzo expressed the opinion "there's only going to
19:44:24 5 be a handful of people using this feature," and you
19:44:27 6 said, "I hope so."

19:44:31 7 He said, "so why build it well," and you
19:44:38 8 didn't say because there are a lot of content owners
19:44:42 9 using it properly.

19:44:43 10 You said, at line, "12:19:10," quote,
19:44:48 11 "basically this is all a cya for us."

19:44:54 12 Does "cya" stand for "cover your ass"?

19:44:58 13 A Generally, it does.

19:45:00 14 Q Do you have any reason to think you used it
19:45:02 15 in some other way here?

19:45:05 16 A No.

19:45:06 17 Q Okay.

19:45:08 18 A But I don't know. I don't remember this
19:45:09 19 specific chat, but yes.

19:45:11 20 Q Have you ever used it for anything else?

19:45:14 21 A Not that -- I don't know. I don't know that
19:45:16 22 I can recall.

19:45:17 23 Q Okay. And then you ended with --

19:45:21 24 A Well, also -- actually, no. I take that
19:45:22 25 back. See ya, we also used it for see ya, but I don't

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1 DUNTON

19:54:13 2 sorry. An instant message exchange. I misspoke.

19:54:18 3 A That's what it looks to be, yes.

19:54:20 4 Q Okay. Before reading the document, do you
19:54:34 5 ever remember talking about whether you could add a
19:54:42 6 feature to the -- to the Copyright Copy Tool where
19:54:51 7 content owners could get e-mail alerts sent to them
19:54:56 8 whenever a video was uploaded -- uploaded with their
19:54:59 9 designated keywords?

19:55:03 10 A Yes, I remember discussing it.

19:55:05 11 Q Okay. Do you remember whether that was ever
19:55:07 12 implemented?

19:55:15 13 A I don't recall if e-mail alerts were
19:55:17 14 implemented.

19:55:18 15 Q Okay. What part of that do you recall? What
19:55:21 16 part of that issue do you recall?

19:55:27 17 A I recall there was some discussion about
19:55:30 18 implementing it, but I don't -- I don't recall if we
19:55:32 19 did.

19:55:35 20 Q Okay. Do you know why it was being
19:55:41 21 discussed?

19:55:47 22 A It -- it was being discussed -- well, I was
19:55:50 23 discussing it because it was a feature that people
19:55:53 24 within the company were -- that certain people wanted
19:55:58 25 to build in, so that's why that would be my

1 DUNTON

19:56:01 2 involvement in it.

19:56:02 3 Q Were you one of the people who wanted to
19:56:04 4 build it in?

19:56:05 5 A I don't believe I was in favor of it.

19:56:07 6 Q Do you recall why you weren't in favor of it?

19:56:14 7 A I think we may have talked about this
19:56:16 8 previously, but because I knew it would give content
19:56:22 9 owners or whomever was using the tool the ability to
19:56:26 10 mass flag and take down videos based on a single
19:56:30 11 keyword, and I also knew that keywords were not
19:56:36 12 necessarily representative of the content.

19:56:46 13 Q Okay. Let me direct your attention to --
19:57:06 14 sticking with Exhibit 21 -- to the line beginning at
19:57:16 15 "12:04:05."

19:57:29 16 You raise the following, quote, "hey,
19:57:35 17 question, so could we also do something for these guys
19:57:38 18 where they get email alerts sent to them (either like
19:57:43 19 daily or weekly) whenever a video is uploaded with
19:57:46 20 their designated keyword?"

19:57:50 21 Do you remember having this discussion with
19:57:52 22 Matt Rizzo?

19:57:56 23 A I don't remember this specific chat, but I do
19:57:59 24 remember generally discussing the functionality.

19:58:01 25 Q With Matt Rizzo?

1 DUNTON

19:58:07 2 A Yes, and with other people inside the
19:58:08 3 company.

19:58:09 4 Q Okay. He responds, "yeah, but," and then
19:58:16 5 sort of two carets. Do you know what Matt Rizzo, with
19:58:24 6 whom you often IM a lot, means when he indicates these
19:58:29 7 two carets next to each other?

19:58:30 8 A No, I do not. He does it all the time, and I
19:58:33 9 have no idea what it means.

19:58:35 10 Q He does it all the time?

19:58:36 11 A He does, yeah. I have no idea what it means.

19:58:38 12 Q Did you ever ask -- did you ever ask him?

19:58:40 13 A No, I never asked.

19:58:42 14 Q Okay. For the next three lines, you then
19:58:55 15 describe how the feature would work and -- you and
19:58:59 16 Rizzo were both describing how the feature would work.

19:59:04 17 In line 12:05:39, Mr. Rizzo says "lol u
19:59:13 18 know."

19:59:13 19 Do you know what "lol" means?

19:59:16 20 A Laugh out loud.

19:59:17 21 Q Okay. And then you respond, "hrm i hate this
19:59:22 22 feature. I hate making it easier for these a-holes."

19:59:27 23 By "a-holes," you meant assholes?

19:59:31 24 A Likely.

19:59:32 25 Q Okay. And by "a-holes" you were referring to

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1 DUNTON

20:01:11 2 using the tool properly; is that correct?

20:01:17 3 A I hated the tool, as I said, because I
20:01:23 4 recognized the potential for content owners to mass
20:01:27 5 take down content based on a single keyword, whatever
20:01:31 6 keyword they wanted, and I also knew that keywords
20:01:34 7 were not necessarily accurate descriptions of that
20:01:38 8 content, and so yes, I hated the feature.

20:01:43 9 Q But you didn't know whether it might have
20:01:48 10 been five content owners who had abused it, and 5,000
20:01:52 11 who had been using it perfectly lawfully, because you
20:01:57 12 don't know -- you didn't know how many were using it
20:01:59 13 lawfully; correct?

20:02:04 14 A I have no idea the numbers of content
20:02:09 15 providers who were using the tool were -- used it to
20:02:15 16 take down authorized or unauthorized content. No, I
20:02:18 17 don't have any specific numbers.

20:02:20 18 Q Okay. Do you recall, or forget it.

20:02:46 19 What -- where would I look to confirm that
20:03:10 20 your testimony that the tool allowed takedown based on
20:03:14 21 a single keyword?

20:03:20 22 MR. KRAMER: Calls for speculation.

20:03:24 23 THE WITNESS: No, no. What I said was the
20:03:26 24 functionality that we were discussing would allow the
20:03:29 25 ability for content owners to flag, to take down

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20:03:33 2 content, flag it for take down based on a single
20:03:39 3 keyword. That's the functionality we were talking
20:03:41 4 about.

20:03:42 5 MR. DESANCTIS: Okay.

20:03:45 6 Q And are you of -- aware of any documents or
20:03:50 7 other place that one could look if he or she wanted to
20:03:55 8 verify the truth of that testimony?

20:03:58 9 A That that's what we were discussing?

20:04:00 10 Q Yeah.

20:04:03 11 A We were discussing it. I mean, I --

20:04:04 12 Q Oh, I'm sorry. No, not that's what you were
20:04:08 13 discussing, but that's what the tool would do.

20:04:13 14 A I don't -- as I think I said, I don't
20:04:16 15 remember if we actually implemented the e-mail alert
20:04:19 16 tool that we're talking about.

20:04:24 17 Q I see.

20:04:24 18 You don't know whether it was ever
20:04:27 19 implemented?

20:04:28 20 A The e-mail alerts, correct.

20:04:40 21 Q In order to implement it, would the source
20:04:43 22 code have to be altered?

20:04:44 23 MR. KRAMER: Calls for speculation.

20:04:45 24 MR. DESANCTIS: Q. Do you know whether, in
20:04:47 25 order to implement it, a new feature like this, the

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